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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE FABIAN-GARCIA,

Defendant - Appellant.

No. 06-10155

D.C. No. CR-05-00013-HDM

MEMORANDUM *

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted November 13, 2007**

Before: TROTT, W. FLETCHER and CALLAHAN, Circuit Judges.

Jose Fabian-Garcia appeals from the 46-month sentence imposed following his guilty-plea conviction for unlawful reentry by deported alien, in violation of 8

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Fabian-Garcia contends that the sentence was not reasonable because the district court failed to address all relevant sentencing factors. A review of the record establishes that the district court did take into account the relevant sentencing factors and that the sentence imposed was not unreasonable. *See United States v. Plouffe*, 445 F.3d 1126, 1128 (9th Cir.), *cert. denied*, 126 S. Ct 2314 (2006).

Fabian-Garcia contends that the district court violated his rights under the Sixth Amendment by enhancing his sentence based on a prior conviction that was neither alleged in the indictment nor proven beyond a reasonable doubt. We disagree. The district court properly relied on a prior conviction to enhance the sentence. *See United States v. Covian-Sandoval*, 462 F.3d 1090, 1096-97 (9th Cir. 2006). Furthermore, we conclude that any error resulting from the omission in the indictment of the prior conviction date and the type of prior conviction was harmless. *See United States v. Salazar-Lopez*, No. 06-50438, 2007 WL 3085906 at *6 (9th Cir. Oct. 24, 2007).

Finally, Fabian-Garcia contends that his sentence should not have been enhanced based on a prior conviction under California Health & Safety Code

§ 11352(a) because the statute is overbroad. We need not reach this contention because we conclude that the district court properly enhanced the sentence based on two convictions under California Health & Safety Code § 11359, which categorically describes a drug trafficking offense. *See United States. v. Martinez-Rodriguez*, 472 F.3d 1087, 1095 (9th Cir. 2007).

AFFIRMED.